



Statement by the  
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for Justice & Constitutional  
Affairs (Mr. Chestus) on  
17/11/2010 (17/11/2010)

Ministry of Justice, National Cohesion and Constitutional Affairs

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## MINISTERIAL STATEMENT ON THE PROGRESS MADE BY THE INTERIM INTERDEPENDENT BOUNDARIES REVIEW COMMISSION OF KENYA AND THE VALIDITY OR AUTHORISE OF ANY GAZETTE NOTICE OF THE REPORT OF THE COMMISSION

**Mr. Speaker Sir**, you will recall that yesterday 16<sup>th</sup> November, 2010, the Hon. Minister, Kisumu Town West. Hon John Olago Alouch rose on a point of order to seek a Ministerial Statement on the progress made by the interim Independent Boundaries Review Commission and validity or otherwise of any gazette notice of the report of the Commission. Specifically, the Hon. Member sought the statement to address the following Pertinent and urgent issues:-

- (a) The Independence of the Commission as set out under section 41B (8) of the former Constitution under which the commission operates.
- (b) Tenure of the Commission as set out under section 41B(11) of the former Constitution.



- (c) Delimitation of Electoral units under articles 89 and 89(5) and (6) of the Constitution.
- (d) How the Commission will proceed under the Constitution in line with sections 27 and 28 of the sixth schedule to the Constitution and whether or not the Commission has gazetted the Boundaries.

**Mr. Speaker sir, I wish to report as follows:-**

**(a) The Independence of the Commission**

**Mr. Speaker sir,** the Interim Independent Boundaries Review Commission is established under section 41(B) of the former Constitution. 41(C) of the former Constitution sets the functions of the IIBRC.

Sections 41(B) and 41(C) of the former Constitution continue to apply under the new Constitution as provided for under section 27(I) of the sixth schedule of the Transitional and Consequential provisions.

**Mr. Speaker sir,** section 41(B) Sub-section 8 provides that the Commission in exercising of its functions under section 41(C), shall not be subject to the direction or control of any other person or authority. The Commission is therefore independent and not subject to direction or control from any quarter.

**Mr. Speaker Sir,** Since its establishment the Commission has operated independently. In fact at one time the Commission refused to respond to the parliamentary Committee on the Constitution Review, when it invited to present its views to the Committee in Naivasha, citing its independence. The Commission has also vigorously asserted its independence whenever it has interacted with the Ministry of Justice, national cohesion and constitutional affairs. As a Ministry responsible in Government <sup>for</sup> both Elections, Political Parties and Constitutional Affairs, my Ministry has continued to support the operations of the Commission and has not in any way interfered with its operations

### **(b) The Tenure of the Commission**

Section 41(B) subsection (II) of the former Constitution provides clearly that the Commission shall stand dissolved twenty four (24) months after the Commencement of the section (28.9.2008) or three (3) month after promulgation of the new Constitution, ~~The new Constitution~~ whichever is earlier.

The Promulgation of the new Constitution occurred first on 27.8.2010 hence the Commission shall stand dissolved on 27.11.2010.

### **(c) Delimitation of Electoral Units under article 89(5) and 89(6) of the Constitution**

**Mr. Speaker sir**, under section 27(b) of the sixth schedule Interim Independent Boundaries Review Commission shall determine the Boundaries of Constituencies and wards using the criteria set out in the new Constitution.

**Mr. Speaker sir**, article 89 of the new Constitution sets out the criteria to guide the commission in determining the boundaries of the Constituencies and wards.

**(d) How the Commission will proceed under the Constitution in line with section 27 and 28 of the sixth schedule of the Constitution.**

*DM* **Mr. Speaker sir**, under section 27(I) <sup>(b)</sup> ~~(a)~~ of the sixth schedule of the Constitution the Commission in determining the Boundaries of the Constituency and ward, shall use the criteria set out in the Constitution.

*DM* Section 27(I) (C) ~~(A)~~ farther provides that members of the Commission shall be subject to chapter 7 of the Constitution.

Accordingly, the Commission in excising its function under section 41(C) of the former Constitution should apply its mind to the relevant provisions of chapter 7 of the Constitution being article 89 and more particularly article 89(5) and 89(6).

**Mr. Speaker Sir**, the Commission has determined the boundaries of the Constitutiecies in line with the criteria set out under article 89 of the new Constitution. The Commission has

since forwarded its report to the Government printer for gazettelement.

**Mr. Speaker sir**, the Commission has confirmed to me that it sought Constitutional interpretation from the Attorney General on the status of its report and whether it should gazette the same.

*(Don)* **Mr. Speaker sir**, the Attorney General in this letter of 13/09/2010 advised the Commission that whereas under the former Constitution of Kenya <sup>Commission</sup> ~~you~~ <sup>is</sup> are required to make a recommendation to parliament, in relation to the boundaries of Constituencies and, under the new Constitution <sup>the Commission is to require</sup> ~~you are~~ to determine such boundaries. The Commission was therefore mandated to gazette its determination(Report). ~~Public the~~  
~~report~~

**(e) Whether or not the Commission has gazetted the Boundaries**

**Mr. Speaker sir**, though the Commission has forwarded its report to the Government Printer for gazettelement the same has not been Gazetted.

  
**Hon William Cheptumo, MP**  
**ASSISTANT MINISTER**

